

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 1/26/2015
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MELISSA TIERNEY, individually and on behalf	:	
of other persons similarly situated who were	:	
employed,	:	
	:	
Plaintiffs,	:	14-CV-2926 (VEC)
	:	
-against-	:	<u>ORDER</u>
	:	
SIRIUS XM RADIO, INC., and/or any other	:	
entities affiliated with or controlled by Sirius XM	:	
Radio, Inc.,	:	
Defendants.	:	
-----X		

VALERIE CAPRONI, United States District Judge:

WHEREAS Plaintiffs move to amend the Complaint to remove Melissa Tierney as Named Plaintiff;

WHEREAS Defendants oppose the motion, asserting that Plaintiffs have not shown good cause to modify the Scheduling Order, which required any amended pleadings to be filed in August 2014, *see* Fed. R. Civ. P. 16(b)(4);

WHEREAS Plaintiff Melissa Tierney became unexpectedly unwilling to produce responsive documents or to participate in her deposition, which Defendants timely noticed, Lampe Decl. ¶¶ 5-6; and

WHEREAS Tierney intends to opt out of her Fair Labor Standards Act (“FLSA”) claims but not her New York Labor Law (“NYLL”) claims;

IT IS HEREBY ORDERED that:

1. Plaintiffs’ motion for leave to amend the Complaint (as well as the Notice and Consent Forms) is GRANTED. All Plaintiffs other than Tierney had good cause for

- their delay in seeking leave to amend the Complaint and the interests of justice require an amendment. *See* Fed. R. Civ. P. 16(b)(4), 15(a)(2).
2. Tierney is DISMISSED from this case with prejudice as to her claims under the FLSA but without prejudice as to her participation in the putative NYLL class.
 3. If the Court does certify Plaintiffs' putative NYLL class, then the Court will be sympathetic to requests for discovery from Tierney, despite her status as an absent class member. *Cf. Manual for Complex Litigation, Fourth Edition* § 21.41.
 4. Plaintiffs' motion to equitably toll the statute of limitations from December 29, 2014, is DENIED. *See Zerilli-Edelglass v. New York City Transit Auth.*, 333 F.3d 74, 80 (2d Cir. 2003).

The Clerk of the Court is directed to terminate Dkt. 54.

SO ORDERED.

Date: January 26, 2015
New York, New York


VALERIE CAPRONI
United States District Judge